

State of Arizona
Senate
Forty-seventh Legislature
First Regular Session
2005

CHAPTER 185

SENATE BILL 1040

AN ACT

AMENDING SECTIONS 12-511 AND 13-501, ARIZONA REVISED STATUTES; REPEALING SECTION 13-1406.01, ARIZONA REVISED STATUTES; AMENDING SECTIONS 13-1407, 13-1420 AND 13-1423, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 29, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-2907.03; AMENDING SECTIONS 13-3821 AND 36-3701, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 21, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-2406; AMENDING SECTION 46-292, ARIZONA REVISED STATUTES; RELATING TO SEXUAL ASSAULT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 12-511, Arizona Revised Statutes, is amended to
3 read:

4 12-511. Civil action arising from criminal conduct; definitions

5 A. Notwithstanding section 12-542, the statute of limitations for any
6 civil cause of action that is brought by a victim against a defendant for
7 criminal conduct against the victim is as follows:

8 1. If the defendant is convicted of criminal conduct against the
9 victim, the statute of limitations is extended for one year from the time the
10 conviction becomes final.

11 2. Regardless of whether the defendant is convicted of criminal
12 conduct against the victim, the statute of limitations is tolled from the
13 time the defendant is charged by a criminal complaint or indictment until the
14 final adjudication of the criminal prosecution of the defendant.

15 B. If the civil cause of action brought pursuant to subsection A of
16 this section arises out of more than one incident of criminal conduct
17 included in the conviction, the statute of limitations prescribed by
18 subsection A of this section shall run from the date of the last incident of
19 criminal conduct or conviction.

20 C. There is no duty under a policy of insurance to defend or indemnify
21 for any loss resulting from criminal conduct ~~as defined by this section~~ if
22 the civil action is not commenced within the time period that would be
23 applicable without any tolling or extension of the statute of limitations
24 pursuant to this section.

25 D. This section does not toll or extend any statute of limitations
26 applicable to a civil cause of action brought against the employer or former
27 employer of any defendant who is subject to this section.

28 E. This section does not shorten any other applicable tolling
29 provisions.

30 F. In any action brought pursuant to this section, the standard of
31 proof is by the preponderance of the evidence.

32 G. For the purposes of this section:

33 1. "Civil cause of action" means any civil claim that the victim could
34 have brought against the defendant only for criminal conduct committed
35 against the victim regardless of whether any of these incidents were WAS
36 criminally prosecuted.

37 2. "Criminal conduct":

38 (a) Means any act in violation of section 13-1103, 13-1104, 13-1105,
39 13-1203, 13-1204, 13-1208, 13-1304, 13-1404, 13-1405, 13-1406, ~~13-1406.01,~~
40 13-1410, 13-1417, 13-3552, 13-3553, 13-3554, 13-3601 or 13-3601.02.

41 (b) INCLUDES ANY ACT INVOLVING SEXUAL ASSAULT OF A SPOUSE THAT WAS
42 COMMITTED BEFORE THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION.

43 3. "Defendant" means a natural person.

44 4. "Final disposition" has the same meaning prescribed in sections
45 8-382 and 13-4401.

1 5. "Victim" has the same meaning prescribed in sections 8-382 and
2 13-4401.

3 Sec. 2. Section 13-501, Arizona Revised Statutes, is amended to read:

4 13-501. Persons under eighteen years of age; felony charging;
5 definitions

6 A. The county attorney shall bring a criminal prosecution against a
7 juvenile in the same manner as an adult if the juvenile is fifteen, sixteen
8 or seventeen years of age and is accused of any of the following offenses:

- 9 1. First degree murder in violation of section 13-1105.
10 2. Second degree murder in violation of section 13-1104.
11 3. Forcible sexual assault in violation of section 13-1406.
12 4. Armed robbery in violation of section 13-1904.
13 5. Any other violent felony offense.
14 6. Any felony offense committed by a chronic felony offender.
15 7. Any offense that is properly joined to an offense listed in this

16 subsection.

17 B. Except as provided in subsection A of this section, the county
18 attorney may bring a criminal prosecution against a juvenile in the same
19 manner as an adult if the juvenile is at least fourteen years of age and is
20 accused of any of the following offenses:

- 21 1. A class 1 felony.
22 2. A class 2 felony.
23 3. A class 3 felony in violation of any offense in chapters 10 through
24 17 or chapter 19 or 23 of this title.

25 4. A class 3, 4, 5 or 6 felony involving the intentional or knowing
26 infliction of serious physical injury or the discharge, use or threatening
27 exhibition of a deadly weapon or dangerous instrument.

28 5. Any felony offense committed by a chronic felony offender.

29 6. Any offense that is properly joined to an offense listed in this
30 subsection.

31 C. A criminal prosecution shall be brought against a juvenile in the
32 same manner as an adult if the juvenile has been accused of a criminal
33 offense and has a historical prior felony conviction.

34 D. At the time the county attorney files a complaint or indictment the
35 county attorney shall file a notice stating that the juvenile is a chronic
36 felony offender. Subject to subsection E of this section, the notice shall
37 establish and confer jurisdiction over the juvenile as a chronic felony
38 offender.

39 E. Upon motion of the juvenile the court shall hold a hearing after
40 arraignment and before trial to determine if a juvenile is a chronic felony
41 offender. At the hearing the state shall prove by a preponderance of the
42 evidence that the juvenile is a chronic felony offender. If the court does
43 not find that the juvenile is a chronic felony offender, the court shall
44 transfer the juvenile to the juvenile court pursuant to section 8-302. If
45 the court finds that the juvenile is a chronic felony offender or if the

1 juvenile does not file a motion to determine if the juvenile is a chronic
2 felony offender, the criminal prosecution shall continue.

3 F. Except as provided in section 13-921, a person who is charged
4 pursuant to this section shall be sentenced in the criminal court in the same
5 manner as an adult for any offense for which the person is convicted.

6 G. For the purposes of this section:

7 1. "Accused" means a juvenile against whom a complaint, information or
8 indictment is filed.

9 2. "Chronic felony offender" means a juvenile who has had two prior
10 and separate adjudications and dispositions for conduct that would constitute
11 a historical prior felony conviction if the juvenile had been tried as an
12 adult.

13 3. "Forcible sexual assault" means sexual assault pursuant to section
14 13-1406 that is committed without consent as defined in section 13-1401,
15 paragraph 5- 4, subdivision (a).

16 4. "Historical prior felony conviction" has the same meaning
17 prescribed in section 13-604.

18 5. "Other violent felony offenses OFFENSE" means:

19 (a) Aggravated assault pursuant to section 13-1204, subsection A,
20 paragraph 1.

21 (b) Aggravated assault pursuant to section 13-1204, subsection A,
22 paragraph 2 involving the use of a deadly weapon.

23 (c) Drive by shooting pursuant to section 13-1209.

24 (d) Discharging a firearm at a structure pursuant to section 13-1211.

25 Sec. 3. Repeal

26 Section 13-1406.01, Arizona Revised Statutes, is repealed.

27 Sec. 4. Section 13-1407, Arizona Revised Statutes, is amended to read:
28 13-1407. Defenses

29 A. It is a defense to a prosecution pursuant to sections 13-1404 and
30 13-1405 involving a minor,— if the act was done in furtherance of lawful
31 medical practice.

32 B. It is a defense to a prosecution pursuant to sections 13-1404 and
33 13-1405 in which the victim's lack of consent is based on incapacity to
34 consent because the victim was fifteen, sixteen or seventeen years of age,—
35 if at the time the defendant engaged in the conduct constituting the offense
36 the defendant did not know and could not reasonably have known the age of the
37 victim.

38 C. It is a defense to a prosecution pursuant to section 13-1402,
39 13-1404, 13-1405 or 13-1406,— if the act was done by a duly licensed
40 physician or registered nurse or a person acting under ~~his or her~~ THE
41 PHYSICIAN'S OR NURSE'S direction, or any other person who renders emergency
42 care at the scene of an emergency occurrence, ~~and~~ THE ACT consisted of
43 administering a recognized and lawful form of treatment ~~which~~ THAT was
44 reasonably adapted to promoting the physical or mental health of the patient
45 and the treatment was administered in an emergency when the duly licensed

1 physician or registered nurse or a person acting under ~~his or her~~ THE
2 PHYSICIAN'S OR NURSE'S direction, or any other person rendering emergency
3 care at the scene of an emergency occurrence, reasonably believed that no one
4 competent to consent could be consulted and that a reasonable person, wishing
5 to safeguard the welfare of the patient, would consent.

6 D. It is a defense to a prosecution pursuant to section 13-1404, OR
7 13-1405 ~~or 13-1406~~ that the person was the spouse of the other person at the
8 time of commission of the act. It is not a defense to a prosecution pursuant
9 to section ~~13-1406.01~~ 13-1406 that the defendant was the spouse of the victim
10 at the time of commission of the act.

11 E. It is a defense to A prosecution pursuant to section 13-1404 or
12 13-1410 that the defendant was not motivated by a sexual interest. It is a
13 defense to A prosecution pursuant to section 13-1404 involving a victim under
14 fifteen years of age that the defendant was not motivated by a sexual
15 interest.

16 F. It is a defense to A prosecution pursuant to section 13-1405 if the
17 victim is ~~of the age of~~ fifteen, sixteen or seventeen YEARS OF AGE, the
18 defendant is ~~less than~~ UNDER nineteen years of age or attending high school
19 and is no more than twenty-four months older than the victim and the conduct
20 is consensual.

21 Sec. 5. Section 13-1420, Arizona Revised Statutes, is amended to read:
22 13-1420. Sexual offense; evidence of similar crimes; definition

23 A. If the defendant is charged with ~~a violation of~~ COMMITTING a sexual
24 offense, the court may admit evidence that the defendant committed past acts
25 ~~which~~ THAT would constitute a sexual offense and may consider the bearing
26 this evidence has on any matter to which it is relevant.

27 B. This section does not limit the admission or consideration of
28 evidence under any court rule.

29 C. For the purposes of this section, "sexual offense" means any of the
30 following:

- 31 1. Sexual abuse, in violation of section 13-1404.
- 32 2. Sexual conduct with a minor in violation of section 13-1405.
- 33 3. Sexual assault, in violation of section 13-1406.
- 34 4. Sexual assault of a spouse, ~~in violation of section 13-1406.01~~ IF
35 THE OFFENSE WAS COMMITTED BEFORE THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS
36 SECTION.
- 37 5. Molestation of a child, in violation of section 13-1410.
- 38 6. Continuous sexual abuse of a child, in violation of section
39 13-1417.
- 40 7. Sexual misconduct by a behavioral health professional, in
41 violation of section 13-1418.
- 42 8. Commercial sexual exploitation of a minor, in violation of section
43 13-3552.
- 44 9. Sexual exploitation of a minor, in violation of section 13-3553.

5. Sexual assault pursuant to section 13-1406.

1 6. Sexual assault of a spouse ~~pursuant to section 13-1406.01~~ IF THE
2 OFFENSE WAS COMMITTED BEFORE THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS
3 SECTION.

4 7. Molestation of a child pursuant to section 13-1410.

5 8. Continuous sexual abuse of a child pursuant to section 13-1417.

6 9. Taking a child for the purpose of prostitution pursuant to section
7 13-3206.

8 10. Child prostitution pursuant to section 13-3212.

9 11. Commercial sexual exploitation of a minor pursuant to section
10 13-3552.

11 12. Sexual exploitation of a minor pursuant to section 13-3553.

12 13. Luring a minor for sexual exploitation pursuant to section 13-3554.

13 14. A second or subsequent violation of indecent exposure to a person
14 under the age of fifteen years pursuant to section 13-1402, subsection B.

15 15. A second or subsequent violation of public sexual indecency to a
16 minor under the age of fifteen years pursuant to section 13-1403,
17 subsection B.

18 16. A third or subsequent violation of indecent exposure pursuant to
19 section 13-1402.

20 17. A third or subsequent violation of public sexual indecency pursuant
21 to section 13-1403.

22 18. A violation of section 13-3822 or 13-3824.

23 B. Before the person is released from confinement the state department
24 of corrections in conjunction with the department of public safety and each
25 county sheriff shall complete the registration of any person who was
26 convicted of a violation of any offense listed under subsection A of this
27 section. Within three days after the person's release from confinement, the
28 state department of corrections shall forward the registered person's records
29 to the department of public safety and to the sheriff of the county in which
30 the registered person intends to reside. Registration pursuant to this
31 subsection shall be consistent with subsection E of this section.

32 C. Notwithstanding subsection A of this section, the judge who
33 sentences a defendant for any violation of chapter 14 or 35.1 of this title
34 or for an offense for which there was a finding of sexual motivation pursuant
35 to section 13-118 may require the person who committed the offense to
36 register pursuant to this section.

37 D. The court may require a person who has been adjudicated delinquent
38 for an act that would constitute an offense specified in subsection A or C of
39 this section to register pursuant to this section. Any duty to register
40 under this subsection shall terminate when the person reaches twenty-five
41 years of age.

42 E. A person who has been convicted of or adjudicated delinquent and
43 who is required to register in the convicting state for an act that would
44 constitute an offense specified in subsection A or C of this section and who

1 is not a resident of this state shall be required to register pursuant to
2 this section if the person is either:

3 1. Employed full-time or part-time in this state, with or without
4 compensation, for more than fourteen consecutive days or for an aggregate
5 period of more than thirty days in a calendar year.

6 2. Enrolled as a full-time or part-time student in any school in this
7 state for more than fourteen consecutive days or for an aggregate period of
8 more than thirty days in a calendar year. For the purposes of this
9 paragraph, "school" means an educational institution of any description,
10 public or private, wherever located in this state.

11 F. Any duty to register under subsection D or E of this section for a
12 juvenile adjudication terminates when the person reaches twenty-five years of
13 age.

14 G. The court may order the termination of any duty to register under
15 this section ~~upon~~ ON successful completion of probation if the person was
16 under eighteen years of age when the offense for which the person was
17 convicted was committed.

18 H. At the time of registering, the person shall sign a statement in
19 writing giving such information as required by the director of the department
20 of public safety, including all names by which the person is known. The
21 sheriff shall fingerprint and photograph the person and within three days
22 thereafter shall send copies of the statement, fingerprints and photographs
23 to the criminal identification section within the department of public safety
24 and the chief of police, if any, of the place where the person resides.

25 I. ~~Upon~~ ON the person's initial registration and every year after the
26 person's initial registration, the person shall obtain a new nonoperating
27 identification license or a driver license from the motor vehicle division in
28 the department of transportation and shall carry a valid nonoperating
29 identification license or a driver license. Notwithstanding sections 28-3165
30 and 28-3171, the license shall be valid for one year from the date of
31 issuance, and the person shall submit to the department of transportation
32 proof of the person's address. The motor vehicle division shall annually
33 update the person's photograph and shall make a copy of the photograph
34 available to the criminal identification section of the department of public
35 safety or to any law enforcement agency.

36 J. Except as provided in subsection E or K of this section, the clerk
37 of the superior court in the county in which a person has been convicted of a
38 violation of any offense listed under subsection A of this section or has
39 been ordered to register pursuant to subsection C or D of this section shall
40 notify the sheriff in that county of the conviction within ten days after
41 entry of the judgment.

42 K. Within ten days after entry of judgment, a court not of record
43 shall notify the arresting law enforcement agency of an offender's conviction
44 of a violation of section 13-1402. Within ten days after receiving this
45 information, the law enforcement agency shall determine if the offender is

1 required to register pursuant to this section. If the law enforcement agency
2 determines that the offender is required to register, the law enforcement
3 agency shall provide the information required by section 13-3825 to the
4 department of public safety and shall make community notification as required
5 by law.

6 L. A person who is required to register pursuant to this section
7 because of a conviction for the unlawful imprisonment of a minor or the
8 kidnapping of a minor is required to register, absent additional or
9 subsequent convictions, for a period of ten years from the date that the
10 person is released from prison, jail, probation, community supervision or
11 parole and the person has fulfilled all restitution obligations.
12 Notwithstanding this subsection, a person who has a prior conviction for an
13 offense for which registration is required pursuant to this section is
14 required to register for life.

15 M. A person who is required to register pursuant to this section and
16 who is a student at a public or private institution of postsecondary
17 education or who is employed, with or without compensation, at a public or
18 private institution of postsecondary education or who carries on a vocation
19 at a public or private institution of postsecondary education shall notify
20 the county sheriff having jurisdiction of the institution of postsecondary
21 education. The person required to register pursuant to this section shall
22 also notify the sheriff of each change in enrollment or employment status at
23 the institution.

24 Sec. 9. Section 36-3701, Arizona Revised Statutes, is amended to read:
25 36-3701. Definitions

26 In this article, unless the context otherwise requires:

27 1. "Agency" means any agency that is authorized to direct the release
28 of a person who is serving a sentence or term of confinement or who is
29 receiving treatment, including a state or federal prison, a county jail and
30 the Arizona state hospital.

31 2. "Competent professional" means a person who is:

32 (a) Familiar with the state's sexually violent persons statutes and
33 sexual offender treatment programs available in this state.

34 (b) Approved by the superior court as meeting court approved
35 guidelines.

36 3. "Conviction" includes a finding of guilt at any time for a sexually
37 violent offense or an order of the juvenile court adjudicating the person
38 delinquent for any sexually violent offense.

39 4. "Less restrictive alternative" means court ordered treatment in a
40 setting that is less restrictive than total confinement and that is conducted
41 in a setting approved by the superintendent of the state hospital.

42 5. "Mental disorder" means a paraphilia, personality disorder or
43 conduct disorder or any combination of paraphilia, personality disorder and
44 conduct disorder that predisposes a person to commit sexual acts to such a
45 degree as to render the person a danger to the health and safety of others.

6. "Sexually violent offense" means any of the following:

(a) Sexual conduct with a minor pursuant to section 13-1405, sexual assault pursuant to section 13-1406, ~~sexual assault of a spouse pursuant to section 13-1406.01~~, molestation of a child pursuant to section 13-1410, or continuous sexual abuse of a child pursuant to section 13-1417 OR SEXUAL ASSAULT OF A SPOUSE IF THE OFFENSE WAS COMMITTED BEFORE THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION.

(b) Second degree murder pursuant to section 13-1104, first degree murder pursuant to section 13-1105, assault pursuant to section 13-1203, aggravated assault pursuant to section 13-1204, unlawful imprisonment pursuant to section 13-1303, ~~kidnaping~~ KIDNAPPING pursuant to section 13-1304 or burglary in the first degree pursuant to section 13-1508 if the court at the time of sentencing or civil commitment proceedings determines beyond a reasonable doubt that the act was sexually motivated pursuant to section 13-118.

(c) An attempt, a solicitation, a facilitation or a conspiracy to commit an offense listed in subdivision (a) or (b) of this paragraph.

(d) An act committed in another jurisdiction that if committed in this state would be a sexually violent offense listed in subdivision (a) or (b) of this paragraph.

(e) A conviction for a felony offense that was in effect before September 1, 1978, AND that if committed on or after September 1, 1978 would be comparable to a sexually violent offense listed in subdivision (a) or (b) of this paragraph.

7. "Sexually violent person" means a person to whom both of the following apply:

(a) Has ever been convicted of or found guilty but insane of a sexually violent offense or was charged with a sexually violent offense and was determined incompetent to stand trial.

(b) Has a mental disorder that makes the person likely to engage in acts of sexual violence.

Sec. 10. Title 41, chapter 21, article 1, Arizona Revised Statutes, is amended by adding section 41-2406, to read:

41-2406. Sexual assault records

A. THE DEPARTMENT OF PUBLIC SAFETY SHALL PROVIDE A COPY OF EACH APPLICABLE DISPOSITION REPORTING FORM RELATING TO SEXUAL ASSAULTS PURSUANT TO SECTION 13-1406 AND FALSE REPORTING OF SEXUAL ASSAULT PURSUANT TO SECTION 13-2907.03 TO THE ARIZONA CRIMINAL JUSTICE COMMISSION.

B. THE ARIZONA CRIMINAL JUSTICE COMMISSION SHALL MAINTAIN THE FOLLOWING RECORDS REGARDING SEXUAL ASSAULTS PURSUANT TO SECTION 13-1406 AND FALSE REPORTING OF SEXUAL ASSAULT PURSUANT TO SECTION 13-2907.03 THAT ARE SUBMITTED TO THE COMMISSION BY THE DEPARTMENT OF PUBLIC SAFETY:

1. THE NUMBER OF POLICE REPORTS THAT ARE FILED.
2. THE NUMBER OF CHARGES THAT ARE FILED AND WHAT CHARGES ARE FILED.
3. THE NUMBER OF CONVICTIONS THAT ARE OBTAINED.

1 4. THE SENTENCES THAT ARE IMPOSED FOR EACH CONVICTION.

2 B. FOR THE PURPOSES OF SUBSECTION A OF THIS SECTION, THE RECORDS SHALL
3 IDENTIFY THE TOTAL NUMBER OF POLICE REPORTS, CHARGES, CONVICTIONS AND
4 SENTENCES FOR ALL SEXUAL ASSAULTS AND THE NUMBER OF POLICE REPORTS, CHARGES,
5 CONVICTIONS AND SENTENCES FOR THOSE SEXUAL ASSAULTS THAT INVOLVED A SPOUSE.
6 FOR THOSE SEXUAL ASSAULTS THAT INVOLVED A SPOUSE, THE REPORT SHALL IDENTIFY
7 WHETHER THE VICTIM AND THE VICTIM'S SPOUSE WERE ESTRANGED. THE RECORDS SHALL
8 ALSO IDENTIFY THE TOTAL NUMBER OF POLICE REPORTS, CHARGES, CONVICTIONS AND
9 SENTENCES FOR ALL FALSE REPORTS THAT RELATE TO SEXUAL ASSAULT OF A SPOUSE
10 PURSUANT TO SECTION 13-2907.03.

11 C. THE COMMISSION SHALL ANNUALLY SUBMIT THE REPORT REQUIRED BY
12 SUBSECTION B OF THIS SECTION TO THE GOVERNOR, THE PRESIDENT OF THE SENATE AND
13 THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND SHALL PROVIDE A COPY OF THIS
14 REPORT TO THE SECRETARY OF STATE AND THE DIRECTOR OF THE ARIZONA STATE
15 LIBRARY, ARCHIVES AND PUBLIC RECORDS. THE COMMISSION MAY SUBMIT THIS REPORT
16 ELECTRONICALLY.

17 Sec. 11. Section 46-292, Arizona Revised Statutes, is amended to read:

18 46-292. Eligibility for assistance

19 A. Cash assistance may be given under this title to any dependent
20 child:

21 1. Who has established residence in Arizona at the time of application
22 and is either:

23 (a) A citizen by birth or naturalization.

24 (b) A qualified alien who entered the United States on or before
25 August 21, 1996.

26 (c) A qualified alien who entered the United States as a member of one
27 of the exception groups under Public Law 104-193, section 412, in which case
28 the person shall be determined eligible in accordance with Public Law
29 104-193.

30 (d) Defined as a qualified alien by the attorney general of the United
31 States under the authority of Public Law 104-208, section 501.

32 For the purposes of subdivisions (b) and (c) of this paragraph, "qualified
33 alien" means a person who is defined as a qualified alien under Public Law
34 104-193, section 431.

35 2. Whose parent or parents or person or persons acting in the parents'
36 place, if employable, ~~shall~~ DO not refuse to accept available employment and
37 ~~if~~ any employable child in the family does not refuse to accept available
38 employment. The department shall assess the applicant's employability at the
39 time of initial application for assistance to establish a self-sufficiency
40 diversion option, if appropriate, before benefit issuance. The determination
41 of employability and the conditions under which employment shall be required
42 shall be determined by the state department, except that claimed
43 unemployability because of physical or mental incapacity shall be determined
44 by the state department in accordance with ~~the provisions of~~ this title.

1 3. Whose parent or parents or other relatives who are applying for or
2 receiving assistance on behalf of the child have not, within one year prior
3 to application, or while a recipient, transferred or assigned real or
4 personal property with the intent to evade federal or state eligibility
5 requirements. Transfer of property with retention of a life estate for the
6 purpose of qualifying for assistance is prohibited. Where fair consideration
7 for the property was received, no inquiry into motive is necessary. A person
8 found ineligible under this section shall be ineligible for such time as the
9 state department determines.

10 B. Qualified aliens entering the United States after August 21, 1996
11 are ineligible for benefits for a period of five years beginning on their
12 date of entry, except for Cuban and Haitian entrants as defined in section
13 501(e)(2) of the refugee education assistance act of 1980 and exceptions
14 provided under Public Law 104-193 (personal responsibility and work
15 opportunity reconciliation act of 1996) and Public Law 105-32 (balanced
16 budget act of 1997).

17 C. A parent or any other relative who applies for or receives cash
18 assistance under this title on behalf of a child shall cooperate with the
19 department by taking the following actions:

20 1. Providing information regarding the identity of the child's father
21 and mother and other pertinent information including their names, social
22 security numbers and current addresses or a sworn statement that attests to
23 the lack of this information and that is accompanied by facts supporting the
24 asserted lack of information.

25 2. Appearing at interviews, hearings and legal proceedings.

26 3. Submitting and having the child submit to genetic testing.

27 4. Signing authorizations for third parties to release information
28 concerning the applicant or the child, or both.

29 5. In cases in which parentage has not been established, providing a
30 sworn statement alleging paternity and setting forth facts establishing a
31 reasonable possibility of the requisite sexual contact between the parties.

32 6. Supplying additional information the department requires.

33 D. The department shall sanction a recipient who fails, without good
34 cause as prescribed in subsection E of this section, to cooperate with child
35 support enforcement efforts according to the sanction provisions of section
36 46-300.

37 E. One or more of the following circumstances constitute good cause
38 for failure to cooperate with child support enforcement efforts:

39 1. Cooperation may result in physical or emotional harm to the parent,
40 child for whom support is sought or caretaker relative with whom the child is
41 living.

42 2. Legal proceedings for adoption of the child for whom support is
43 sought are pending before a court.

1 3. The participant has been working, for less than ninety days, with a
2 public or licensed private social agency on the issue of whether to allow the
3 child for whom support is sought to be adopted.

4 4. The child for whom support is sought was conceived as a result of
5 sexual assault pursuant to section 13-1406 or incest.

6 F. A person claiming good cause has twenty days from the date the good
7 cause claim is provided to the agency to supply evidence supporting the
8 claim. When determining whether the parent or relative is cooperating with
9 the agency as provided in subsection C of this section, the agency shall
10 require:

11 1. If the good cause exception in subsection E, paragraph 1 of this
12 section is claimed, law enforcement, court, medical, criminal, psychological,
13 social service or governmental records or sworn statements from persons with
14 personal knowledge of the circumstances that indicate that the alleged parent
15 or obligor might inflict physical harm on the parent, child or caretaker
16 relative.

17 2. If the good cause exception in subsection E, paragraph 2 of this
18 section is claimed, court documents that indicate that legal proceedings for
19 adoption are pending before a court of competent jurisdiction.

20 3. If the good cause exception in subsection E, paragraph 3 of this
21 section is claimed, records from a public or licensed private social services
22 agency showing that placing the child for whom support is sought is under
23 consideration.

24 4. If the good cause exception in subsection E, paragraph 4 of this
25 section is claimed, law enforcement, court, medical, criminal, psychological,
26 social service or governmental records or sworn statements from persons with
27 personal knowledge of the circumstances surrounding the conception of the
28 child that indicate the child was conceived as a result of sexual assault
29 pursuant to section 13-1406 or incest.

30 G. Notwithstanding subsection A of this section and except as provided
31 in subsection H of this section, a dependent child or children who are born
32 during one of the following time periods are not eligible for assistance
33 under this title:

34 1. The period in which the parent or other relative is receiving
35 assistance benefits.

36 2. The temporary period in which the parent or other relative is
37 ineligible pursuant to a penalty imposed by the department for failure to
38 comply with benefit eligibility requirements, after which the parent or other
39 relative is eligible for a continuation of benefits.

40 3. Any period after November 1, 1995 that is less than sixty months
41 between a voluntary withdrawal from program benefits or a period of
42 ineligibility for program benefits which immediately followed a period during
43 which program benefits were received and a subsequent reapplication and
44 eligibility approval for benefits.

1 H. The following exceptions apply to the ~~provisions of~~ subsection G of
2 this section:

3 1. The department shall allow an increase in cash assistance under the
4 program for a dependent child or children born as a result of an act of
5 sexual assault as prescribed in section 13-1406 ~~or 13-1406.01~~ or incest. The
6 department shall ensure that the proper law enforcement authorities are
7 notified of allegations of sexual assault or incest made pursuant to this
8 paragraph. FOR THE PURPOSES OF THIS PARAGRAPH, "AN ACT OF SEXUAL ASSAULT"
9 INCLUDES SEXUAL ASSAULT OF A SPOUSE IF THE OFFENSE WAS COMMITTED BEFORE THE
10 EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION.

11 2. For those parents or other relatives who are currently authorized
12 for cash assistance the department shall allow an increase in cash assistance
13 under the program as a result of the birth of a child or children to the
14 parent or other relative only if the birth occurred within ten months of the
15 initial eligible month. The department may use only the additional child or
16 children who are born from the pregnancies covered in this subsection in
17 computing the additional benefit.

18 3. The department shall allow an increase in cash assistance for any
19 dependent child born to a parent who has not received cash assistance under
20 this title for at least twelve consecutive months if the child is born within
21 the period beginning ten months after the twelve consecutive month period and
22 ending ten months after the parent resumes receiving cash assistance.

23 4. A dependent child or children who were born during a period in
24 which the custodial parent received cash assistance through the Arizona works
25 program shall be eligible to receive assistance under this title.

26 5. A dependent child or children who were born within ten months after
27 the custodial parent received cash assistance through the Arizona works
28 program shall be eligible to receive assistance under this title.

29 I. The department shall calculate the sixty-month time period
30 referenced in subsection G, paragraph 3 of this section in the following
31 manner:

32 1. For persons who are receiving cash assistance on November 1, 1995,
33 the sixty-month time period begins on November 1, 1995. A subsequent
34 sixty-month time period begins immediately after the previous period ends if
35 the person is receiving cash assistance through two sixty-month periods. If
36 the individual is not receiving cash assistance at the end of the previous
37 sixty-month period, any subsequent sixty-month time period begins on the date
38 when cash assistance became effective again, regardless of when the person
39 received an actual payment.

40 2. For persons who begin receiving cash assistance after November 1,
41 1995, the sixty-month time period begins on the date cash assistance becomes
42 effective, regardless of when the person received an actual payment. A
43 subsequent sixty-month period begins as provided in paragraph 1 of this
44 subsection.

1 J. In calculating a parent's or any other relative's benefit increase
2 that arises from any general increase that has been approved for all program
3 recipients, the department shall not consider a child or children born under
4 the time periods listed in subsection G of this section.

5 K. For the parents or other relatives who have additional children for
6 whom they receive no cash assistance payment under subsection G of this
7 section, the department shall make any necessary program amendments or
8 request any necessary federal waivers to allow the parents or other relatives
9 to earn income in an amount equal to the disallowed cash assistance payment
10 without affecting their eligibility for assistance.

11 L. The director shall adopt rules:

12 1. To implement this section including rules to define the
13 investigatory steps which must be taken to confirm that an act of sexual
14 assault or incest led to the birth of a dependent child or children.

15 2. That require the department to inform both verbally and in writing
16 the parents and other relatives who are receiving assistance under this
17 article of the specific family planning services that are available to them
18 while they are enrolled as eligible persons in the Arizona health care cost
19 containment system.

20 M. Nothing in this section shall be construed to prevent an otherwise
21 eligible child who is not included in the family's calculation of benefits
22 under this article from being eligible for coverage under title 36, chapter
23 29 or for any services that are directly linked to eligibility for the
24 temporary assistance for needy families program.

25 N. Assistance shall not be denied or terminated under this
26 article because the principal wage earner works one hundred or more hours
27 per month.

28 O. The department shall include all income from every source available
29 to the person requesting cash assistance, except income that is required to
30 be disregarded by this subsection and as determined by the department in
31 rules. For the amount of income that is received from employment, each month
32 every employed person is entitled to receive an earned income disregard of
33 ninety dollars plus an additional thirty per cent of the remaining earned
34 income. A household that includes an employed person is entitled to an
35 earned income disregard equal to the actual amount billed to the household
36 for the care of an adult or child dependent household member, up to two
37 hundred dollars a month for a child under two years of age and up to one
38 hundred seventy-five dollars a month for each other dependent. This
39 dependent care disregard is allowed only if the expense is necessary to allow
40 the household member to become or remain employed or to attend postsecondary
41 training or education that is preparatory to employment.

42 P. Any parent or other relative who applies for or receives cash
43 assistance under this article on behalf of a dependent child who is between
44 six and sixteen years of age shall ensure that the child is enrolled in and
45 attending school. An initial applicant is ineligible for benefits until the

1 applicant's dependent children are verified to be enrolled in and attending
2 an educational program. The department of education shall assist the
3 department of economic security in obtaining verification of school
4 enrollment and attendance. The director of the department of economic
5 security may adopt rules for granting good cause exceptions from the
6 ~~provisions of~~ this subsection. The department of economic security shall
7 sanction a recipient who fails, without good cause, to ensure school
8 enrollment and attendance according to the ~~provisions of~~ section 46-300.

9 Q. Any parent or other relative who applies for or receives cash
10 assistance under this section on behalf of a dependent child shall ensure
11 that the child is immunized in accordance with the schedule of immunizations
12 pursuant to section 36-672. The director of the department of economic
13 security may adopt rules for granting good cause exceptions from the
14 ~~provisions of~~ this subsection. The department of economic security shall
15 sanction a recipient, in accordance with the ~~provisions of~~ section 46-300,
16 who fails, without good cause, to obtain the required immunizations for a
17 dependent child unless the recipient submits to the department of economic
18 security the documentation described in section 15-873.

19 Sec. 12. Intent

20 It is the intent of the legislature that the marital status of the parties is
21 no longer relevant under Arizona law in determining whether a sexual act with
22 another person is criminal or not, except as otherwise expressly provided by
23 law.

APPROVED BY THE GOVERNOR APRIL 25, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 25, 2005.

Passed the House April 11, 20 05,

Passed the Senate February 17, 20 05,

by the following vote: 52 Ayes,

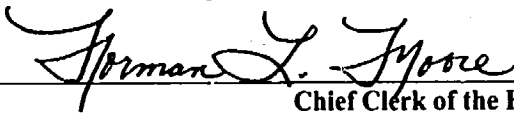
by the following vote: 29 Ayes,

5 Nays, 3 Not Voting

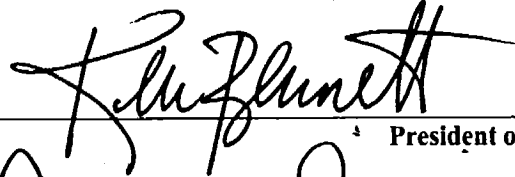
1 Nays, 0 Not Voting




Speaker of the House



Chief Clerk of the House



President of the Senate



Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

S.B. 1040

SENATE CONCURS IN HOUSE AMENDMENTS
AND FINAL PASSAGE

Passed the Senate April 19, 2005,

by the following vote: 22 Ayes,

5 Nays, 3 Not Voting

Ken Bennett
President of the Senate
Channing Bellington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

19th day of April, 2005

at 3:41 o'clock P. M.

Wannice L. Harris
Secretary to the Governor

Approved this 25 day of

April, 2005,

at 9:25 o'clock A. M.

Jan N. Brewer
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 25 day of April, 2005

at 4:33 o'clock P. M.

Janice K. Brewer
Secretary of State